

# State of Colorado



John W. Hickenlooper  
*Governor*

Neil Peck  
*Board Chair*

Dana Shea-Reid  
*Board Director*

**State Personnel Board**  
1525 Sherman Street, 4<sup>th</sup> Floor  
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## **AGENDA PUBLIC BOARD MEETING April 19, 2016**

**A public meeting of the State Personnel Board will be held on Tuesday, April 19, 2016 at the Colorado State Personnel Board, 1525 Sherman Street, 1st Floor Conference Room 103, Denver, Colorado 80203. The public meeting will commence at 9:00 a.m.**

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-866-3300 by April 15, 2016.

### **CALL TO ORDER**

- Attendance.
- Disclosure of any potential conflicts of interest with regard to present Board business and notice of recusal, if applicable.

### **I. REPORT OF DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA] AND REPORT OF THE DIVISION OF HUMAN RESOURCES [DHR]**

### **II. PENDING MATTERS**

James Jimerson v. Department of Corrections, Buena Vista Correctional Facility; State Personnel Board case number 2015B003.

Complainant's Motion for Stay of Appeals Proceedings

### **III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE STATE PERSONNEL BOARD**

### **IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES TO GRANT OR DENY PETITIONS FOR HEARING**

- A. Carol J. Kromer v. Department of Corrections, Colorado Board of Parole, State Personnel Board case number 2016G054.

Complainant, a certified employee of the Department of Corrections ("DOC"), works as an Administrative Assistant III at the Colorado Board of Parole in Respondent's Denver Office. On April 23, 2015, Respondent gave Complainant a confirming memorandum. On September 9, 2015, Respondent gave Complainant a corrective action. Complainant argues that these actions constitute discrimination on the basis of her age. She seeks removal of the corrective action, certain injunctive relief, and an award of attorney fees and costs.

Respondent argues that Complainant's discrimination claims are time barred and that Complainant has failed to establish a *prima facie* case of discrimination. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed with prejudice. Respondent also moves this Board for attorney fees and costs.

On March 10, 2016 the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be denied.

B. Jason Goode v. Governor's Office of Information Technology, State Personnel Board case number 2016G005.

Complainant, who was an IT Professional, Deskside Support Services for Respondent until his termination on June 30, 2015, filed a petition for hearing on July 10, 2015, arguing that Respondent's decision to terminate his employment, during what Respondent considered Complainant's probationary period, was a result of employment discrimination based on disability, as well as retaliation for making complaints to his manager about his supervisor. Complainant also contends that he should have been considered a certified employee at the time of his termination, and was not afforded the due process rights to which certified employees are entitled when faced with a possible disciplinary action. Complainant also claims that he was the victim of workplace violence and Respondent failed to handle his concerns in compliance with department policy. As relief, Complainant requests that he be reinstated at the same class, pay grade and base pay; confirmation of his certified status in that class, with all associated rights; full back pay and benefits, with statutory interest, for the period between the date of termination and the date of reinstatement; attorney fees and costs; transfer to another state department or office or to the Office of Information Technology Annex; and all appropriate remedial measures.

Respondent argues that Complainant has failed to establish grounds that merit a hearing. Respondent alleges that Complainant was a probationary employee, and willingly agreed to that classification; Complainant cannot establish that he was subjected to a hostile work environment or state a *prima facie* case of disability discrimination; and Complainant cannot establish that he was the subject of retaliation for any protected activity. As relief, Respondent requests that the Board deny all relief requested by Complainant and deny Complainant's petition for hearing.

On March 11, 2016, the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be granted solely on the issues of : 1. whether Complainant was a certified or a probationary employee at the time of his termination; and 2. if Complainant was a probationary employee at the time of his termination, whether the grounds for his termination constituted unsatisfactory job performance and, if not, whether his termination was arbitrary, capricious or contrary to rule or law.

C. Seth Downs v. Department of Labor & Employment, Unemployment Insurance Division, State Personnel Board case number 2016G040(C).

Complainant, a certified employee of the Department of Labor and Employment, was

employed as a Labor and Employment Specialist I. He seeks review of a whistleblower claim and a claim of gender discrimination. Following his complaints concerning the way the Department was notarizing documents in March 2015, Respondent placed Complainant on paid leave beginning April 22, 2015, which was converted to unpaid leave from May 18, 2015 through approximately July 26, 2015. Upon his return to work, Respondent transferred Complainant three times in August, September and October, 2015. Complainant seeks back pay from the period he was on forced unpaid leave, plus concomitant benefits (including credit for leave and service), reimbursement of his attorney fees, reinstatement to his position in the Employer Services Premiums Unit, the relief available under the State Employee Protection Act, the relief available under the Colorado Anti-Discrimination Act, and other relief as the Board considers appropriate.

Respondent asserts that this matter should not be set for hearing due to Complainant's failure to establish grounds that merit a hearing under State Personnel Board Rule 8-41. Respondent argues that Complainant has failed to establish that he is entitled to protection as a whistleblower, and that Complainant has failed to establish a prima facie case of retaliation or discrimination on the basis of gender.

Respondent also argues that, because Complainant's initial petition for hearing was not filed until September 30, 2015, the Board does not have jurisdiction to consider any of Respondent's employment actions against Complainant other than "his dispute of his September administrative leave and his non-selection for the Labor and Employment Specialist II position." As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed with prejudice.

On March 29, 2016, the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be granted.

D. William D. Nauroth v. University of Northern Colorado, Information Management and Technology, State Personnel Board case number 2016G050(C).

Complainant, a certified employee of the University of Northern Colorado ("UNC"), is employed as an IT Technician. In his first grievance, Complainant seeks removal of a Corrective Action issued on August 26, 2014. In his second grievance, Complaint again challenges the 2014 Corrective Action and also seeks removal of a second Corrective Action that was issued on October 22, 2015. Among other things, Complainant alleges lack of appointing authority to issue the corrective actions and failure to follow the grievance procedures.

Respondent argues that Complainant's grievance concerning the 2014 Corrective Action is time-barred and that Complainant cannot demonstrate a violation of the grievance procedures for the Corrective Action issued on October 22, 2015. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed with prejudice.

On March 30, 2016 the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be denied.

E. Jamie Thornton v. Department of Public Health & Environment, Office of Legal and Regulatory Compliance, State Personnel Board Case 2016G056.

Complainant appeals Respondent's final grievance decision concerning Complainant's July 13, 2015 corrective action as well as her October 29, 2015 corrective action. Complainant argues that her supervisor, Deborah Nelson, has discriminated against her on the basis of her disabilities, has retaliated against her for taking Family and Medical Leave Act (FMLA) leave, and has created a hostile work environment. Complainant also contends that Respondent violated Board Rule 8-8(2)(b) by allowing a biased individual to make the agency's final grievance decision. As relief, Complainant requests the removal of the July 13, 2015 and the October 29,

2015 corrective actions from her personnel file; that her performance rating for the fiscal year 2015/2016 interim evaluation be raised from a Level 1 to a Level 2 so that she may pursue a transfer to another available state position; and that she be awarded her reasonable attorney's fees and costs.

Respondent argues that this matter should not be set for hearing due to Complainant's failure to establish grounds, factually and legally, that merit a hearing. More specifically, Respondent asserts that Complainant has not demonstrated a viable claim of disability discrimination, retaliation, hostile work environment, or a violation of the grievance process. Respondent alleges that the criticisms, corrective actions, and poor performance review Complainant received were based on her deteriorating job performance and not on any real or perceived disability. As relief, Respondent requests that the Board deny Complainant's petition for hearing as well as all requested relief. Additionally, Respondent requests that the Board dismiss any claim based on allegations of FMLA or Colorado Workers' Compensation Act retaliation. Finally, Respondent also requests an award of attorney's fees and costs when this matter is concluded.

On April 6, 2016 the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be granted.

## **V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES**

### **A. Carol Cordova v. Department of Human Services, Office of Community Access & Independence, Wheat Ridge Regional Center, State Personnel Board case number 2015B108. (March 14, 2016)**

Complainant, who was employed by Respondent as a Licensed Psychiatric Technician (LPT), and was a certified state employee, appeals the April 10, 2015 termination of her employment. Complainant argues that she did not commit the acts for which she was disciplined; that Respondent's decision to terminate her employment was arbitrary, capricious and contrary to rule or law; and that the discipline imposed was not within the range of reasonable of alternatives. Complainant requests reinstatement, back pay and benefits, and attorney fees and costs.

Respondent, Department of Human Services, argues that Complainant did commit the acts and omissions for which she was disciplined; that the disciplinary action was not arbitrary or capricious or contrary to rule or law; that the discipline imposed was within the range of reasonable alternatives; that the decision to terminate Complainant's employment should be upheld; and that Complainant is not entitled to any of the requested relief. For the reasons presented below, the undersigned ALJ finds that Respondent's disciplinary action is affirmed.

On March 14, 2016, the ALJ affirmed the disciplinary action terminating the employment of Complainant.

## **VI. REVIEW OF THE MINUTES FROM THE MARCH 15, 2016 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

## **VII. ACKNOWLEDGMENTS**

### **DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS MARCH 15, 2016 PUBLIC MEETING:**

A. Kathy Starling v. Department of Revenue, Tax Audit and Compliance Division, State Personnel Board case number 2014G013.

The Board voted to adopt the Findings of Fact of the Administrative Law Judge but reverse Conclusions of Law 1 and 2 and to remand to the ALJ to determine remedy.

B. Tamsen Kinkaid v. Department of Human Services, State Veteran's Community Center, State Personnel Board case number 2016G013.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

C. Scott Grover v. Department of Corrections, Arkansas Valley Correctional Facility, State Personnel Board case number 2016G034.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing.

D. Greg Goldman v. Department of Transportation, State Personnel Board case number 2015B108. (March 4, 2016)

The Board took no formal action in this Initial Decision.

## **VIII. ADMINISTRATIVE MATTERS & COMMENTS**

### **A. ADMINISTRATIVE MATTERS**

- Cases on Appeal to Appellate Courts

### **B. OTHER BOARD BUSINESS**

### **C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC**

## **IX. PROPOSED LEGISLATION AND/OR RULEMAKING**

## **X. EXECUTIVE SESSION**

## **ADJOURN:**

**REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.**

<b>January 19, 2016</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>February 16, 2016</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>March 15, 2016</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>April 19, 2016</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>May 17, 2016</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>June 21, 2016</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>July 19, 2016</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>August 16, 2016</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>September 20, 2016</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>October 18, 2016</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>November 15, 2016</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>December 20, 2016</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>